

1 THE HONORABLE JOHN C. COUGHENOUR

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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 ROGER LAMAR WILLIAMS II,

CASE NO. C18-1170-JCC

10 Plaintiff,

MINUTE ORDER

11 v.

12 CITY OF SEATTLE, *et al.*,

13 Defendants.  
14

15 The following Minute Order is made by direction of the Court, the Honorable John C.  
16 Coughenour, United States District Judge:

17 This matter comes before the Court on Plaintiff Roger Williams II's ("Williams")  
18 complaint (Dkt. No. 3). Williams, proceeding *pro se* and *in forma pauperis* ("IFP"), filed this 42  
19 U.S.C. § 1983 civil rights complaint against the City of Seattle, Seattle Police Officers Q. Martin  
20 and R. Behn, and King County public defenders Kimberly Sharkey, William Schwarz, and Kallie  
21 Ferguson. (*Id.* at 1–3.) Having reviewed the complaint pursuant to 28 U.S.C. §1915(e), the Court  
22 declines to order service and summons for the following reasons.

23 Williams' complaint arises out of his 2016 arrest on suspicion of drunk driving ("DUP").  
24 (Dkt. No. 3 at 4.) Williams alleges that the arresting police officer mistakenly wrote in his report  
25 that Williams refused a breath test. (*Id.* at 5.) Williams further alleges that the arresting officer  
26 failed to correctly fill out paperwork that was completed when William had his blood drawn. (*Id.*

1 at 4–5.)

2 Williams was later charged with DUI, but he alleges that he never received the citation  
3 and summons notifying him of his initial appearance. (*Id.* at 5.) He also asserts that the arresting  
4 police officer wrote the wrong date on his DUI citation, which made it appear as if Williams had  
5 multiple DUI arrests, when in fact that was his first DUI arrest. (*Id.*) Williams alleges that as a  
6 result a \$15,000 bench warrant was issued for his arrest. (*Id.*) Williams was ultimately arrested  
7 on the warrant and held in jail pending trial on his DUI charge. (*Id.*) While in jail, Williams  
8 missed a hearing with the Department of Licensing to challenge his license suspension. (*Id.* at 6)  
9 As a result, a default judgment was entered against Williams and his license was suspended. (*Id.*)  
10 Williams ultimately pled guilty to an amended charge of reckless endangerment. (*Id.*) In his  
11 complaint, Williams alleges that those who were involved with his arrest and prosecution  
12 violated his civil rights. (*Id.* at 6–7.)

13 The Court must dismiss an IFP complaint prior to service if it “fails to state a claim on  
14 which relief can be granted.” 28 U.S.C. § 1915(e)(2)(b)(ii). To avoid dismissal, a complaint must  
15 contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its  
16 face. *Ashcroft v. Iqbal*, 556 U.S. 662, 664 (2009). The factual allegations must be “enough to  
17 raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,  
18 555 (2007). The complaint may be dismissed if it lacks a cognizable legal theory or states  
19 insufficient facts to support a cognizable legal theory. *Zixiang v. Kerry*, 710 F.3d 995, 999 (9th  
20 Cir. 2013).

21 The Court holds *pro se* plaintiffs to less stringent pleading standards than represented  
22 plaintiffs and liberally construes a *pro se* complaint in the light most favorable to the plaintiff.  
23 *Erickson v. Pardus*, 551 U.S. 89, 93 (2007). Nevertheless, section 1915(e) “not only permits but  
24 requires a district court to dismiss an in forma pauperis complaint that fails to state a claim.”  
25 *Lopez v. Smith*, 203 F.3d 1122, 1229 (9th Cir. 2000) (en banc). When dismissing a complaint  
26 under section 1915(e), the Court gives *pro se* plaintiffs leave to amend unless “it is absolutely

1 clear that the deficiencies of the complaint could not be cured by amendment.” *Cato v. United*  
2 *States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

3 Having screened plaintiff’s complaint, the Court has identified the following deficiencies:

4 1. Defendants Sharkey, Schwarz, and Ferguson

5 Williams names as Defendants three of his former public defenders. (Dkt. No. 3 at 2–3.)  
6 The complaint does not contain any facts that specify how these Defendants violated his civil  
7 rights. (*See generally* Dkt. No. 3.) Even if Williams had alleged such facts, he cannot sustain a  
8 section 1983 claim against these Defendants because public defenders do not act under the color  
9 of state law. *See Polk Cnty. v. Dodson*, 454 U.S. 312, 324-25 (1981); *Miranda v. Clark Cnty.*,  
10 *Nev.*, 319 F.3d 465, 468 (9th Cir. 2003). Therefore, Williams cannot maintain a section 1983  
11 claim against Defendants Sharkey, Schwarz, and Ferguson.

12 2. Defendant City of Seattle

13 Williams names the City of Seattle as a Defendant. (Dkt. No. 3 at 1.) Plaintiffs may sue  
14 municipalities as a “person” under section 1983. *Monell v. Dep’t of Soc. Servs. of City of New*  
15 *York*, 436 U.S. 658, 691-94 (1978). However, a municipality cannot be held liable under section  
16 1983 solely because it employs a tortfeasor. *Id.* A plaintiff seeking to impose liability on a  
17 municipality under section 1983 must identify a “policy” or “custom” that caused his or her  
18 injury. *Bd. of the Cnty. Comm’rs of Bryant Cnty. v. Brown*, 520 U.S. 397, 403 (1997) (citing  
19 *Monell*, 436 U.S. at 694). Williams’ complaint does not allege any City of Seattle policy or  
20 custom that caused him injury. (*See generally* Dkt. No. 3.) Therefore, Williams cannot maintain  
21 his section 1983 claim against the City of Seattle as currently pled.

22 3. Defendants Behn and Martin

23 To sustain a section 1983 civil rights claim, Williams must show (1) he suffered a  
24 violation of rights protected by the Constitution or created by federal statute, and (2) the  
25 violation was proximately caused by a person acting under color of state or federal law. *West v.*  
26 *Atkins*, 487 U.S. 42, 48 (1988); *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). To

1 satisfy the second prong, Williams must allege facts showing how individually named  
2 Defendants caused or personally participated in causing the harm alleged in the complaint.  
3 *Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981).

4 Williams makes a section 1983 claim against Seattle Police Officers Q. Martin and R.  
5 Behn arising from his 2016 arrest for DUI. (*See generally* Dkt. No. 3.) As an initial matter,  
6 Williams does not provide any facts that support his claim against Officer Martin. Other than  
7 naming Officer Martin as a Defendant, the complaint contains no allegations about how he  
8 violated Williams' civil rights. (*See generally* Dkt. No. 3.) Therefore, Williams has not plausibly  
9 alleged a section 1983 claim against Officer Martin.

10 Nor has Williams plausibly alleged a section 1983 claim against Officer Behn. Williams  
11 asserts that "because Officer Behn did not give me a court date immediately, I missed my  
12 hearing date, causing a warrant to be issued and causing me to be held in jail for 59 days on my  
13 first time DUI charge." (Dkt. No. 3 at 6.) Williams fails to allege what constitutional rights  
14 Officer Behn violated, or how Officer Behn's conduct proximately caused any such violation.  
15 Therefore, Williams cannot maintain a section 1983 claim against Defendants Martin and Behn  
16 as currently pled.

17 Based on the foregoing, the Court DECLINES to serve Williams' complaint, but  
18 GRANTS him leave to file an amended complaint curing the above-noted deficiencies within 30  
19 days after the date this order is issued. The amended complaint must carry the same case number  
20 as this one. If no amended complaint is timely filed or if Williams files an amended complaint  
21 that fails to correct the deficiencies identified above, the Court may recommend that this action  
22 be dismissed under 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim upon which relief  
23 may be granted.

24 Williams is advised that an amended pleading operates as a complete substitute for an  
25 original pleading. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, any  
26 amended complaint must clearly identify the Defendant(s), the constitutional or federal statutory

1 claim(s) asserted, the specific facts which Williams believes support each claim, and the specific  
2 relief requested.

3 The Clerk is DIRECTED to send a copy of this order to Williams.

4 DATED this 29th day of August 2018.

5 William M. McCool  
6 Clerk of Court

7 s/Tomas Hernandez  
8 Deputy Clerk